

1 DAVID M. FRISHMAN (SBN 129992)
2 KENNETH R. ZUETEL (SBN 83100)
3 TYSON & MENDES, LLP
4 515 South Flower Street, 18th Floor
5 Los Angeles, CA 90071
6 Telephone: 213.745.8600
7 Facsimile: 213.745.8604
8 Email(s): dfrishman@tysonmendes.com
9 kzuetel@tysonmendes.com

10 Attorneys for Defendant, LOWE'S HOME CENTERS, LLC
11 (Erroneously sued and served as Lowe's Home Center LLC aka Lowe's)

12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA

14 Pauline Marquez, an individual,
15 Plaintiff(s),

16 v.

17 Lowe's Home Center LLC aka Lowe's;
18 and DOES 1 - 50, Inclusive,
19 Defendant(s).

Case No.: 2:23-cv-07846 FLA (SKx)
[Los Angeles County Superior Court
Case No. 23PSCV00986]

**STIPULATION AND
PROTECTIVE ORDER**

District Judge: Fernando L. Aenlle-
Rocha
Magistrate Judge: Steve Kim

Case Filed: 4/4/2023

20 1. A. PURPOSES AND LIMITATIONS

21 Discovery in this action is likely to involve production of confidential,
22 proprietary, or private information for which special protection from public
23 disclosure and from use for any purpose other than prosecuting this litigation may
24 be warranted. Accordingly, the parties hereby stipulate to and petition the Court to
25 enter the following Stipulated Protective Order. The parties acknowledge that this
26 Order does not confer blanket protections on all disclosures or responses to
27 discovery and that the protection it affords from public disclosure and use extends
28

1 only to the limited information or items that are entitled to confidential treatment
2 under the applicable legal principles. The parties further acknowledge, as set forth
3 in Section 12.3 (Filing Protected Material), below, that this Stipulated Protective
4 Order does not entitle them to a file confidential information under seal; Civil
5 Local Rule 79-5 sets forth the procedures that must be followed and the standards
6 that will be applied when a party seeks permission from the court to file material
7 under seal.

8 B. GOOD CAUSE STATEMENT

9 Federal Rules of Civil Procedure, Rule 26(c)(1) states in pertinent part, that
10 the Court, upon a showing of good cause may “issue an order to protect a party
11 from annoyance, embarrassment, oppression, or undue burden or expense.”
12 Fed.R.Civ.P. 26(c)(1). In the instant matter, Defendant Lowe’s Home Centers,
13 LLC’s Confidential Documents contain proprietary and confidential trade secret
14 information relating to Defendant Lowe’s Home Centers, LLC’s business
15 practices, its safety protocol, and surveillance videos. Defendant Lowe’s Home
16 Centers, LLC. (“Defendant” or “Lowe’s”) derives independent economic value
17 from maintaining the confidentiality of the policies and procedures set forth in
18 these Confidential Documents.

19 Defendant is a retailer in the home improvement industry and has conducted
20 business in California since 1998. The home improvement retail industry is very
21 competitive. As a result of years of investing time and money in research and
22 investigation, Defendant developed the policies contained in the Confidential
23 Documents for the purposes of maintaining the security of its facilities, providing
24 quality customer service, and ensuring the safety of its employees, customers, and
25 other invitees. These policies and procedures, as memorialized in the Confidential
26 Documents, were created and generated by Lowe’s for Lowe’s, and are used for
27 the purposes of maintaining safety at its stores and creating efficient and organized
28 work environments for its employees. As a result, Defendant is able to minimize

1 the waste of any resources, which is a key factor in generating profitability for its
2 business.

3 Defendant derives economic value from maintaining the secrecy of its
4 Confidential Documents. If disclosed to the public, the trade secret information
5 contained in Defendant's Confidential Documents would reveal Defendant's
6 internal operations and could potentially be used by competitors as a means to
7 compete for its customers, interfere with its business plans and thereby gain unfair
8 business advantages. If Defendant's safety protocol were revealed to the general
9 public, it would hinder Defendant's ability to effectively resolve and minimize
10 liability claims, and its goal of protecting its customers and employees from theft
11 and other crimes. Unrestricted or unprotected disclosure of such information would
12 result in prejudice or harm to Defendant by revealing Lowe's competitive
13 confidential information, which has been developed at the expense of Lowe's and
14 which represents valuable tangible and intangible assets. Accordingly, the parties
15 respectfully submit that there is good cause for the entry of this Protective Order.

16 The present action will likely to involve trade secrets, customer and pricing
17 lists, and other valuable research, development, commercial, financial, technical
18 and/or proprietary information for which special protection from public disclosure
19 and from use for any purpose other than prosecution of this action is warranted.
20 Such confidential and proprietary materials and information consist of, among
21 other things, confidential business or financial information, information regarding
22 confidential business practices, or other confidential research, development, or
23 commercial information (including information implicating privacy rights of third
24 parties), information otherwise generally unavailable to the public, or which may
25 be privileged or otherwise protected from disclosure under state or federal statutes,
26 court rules, case decisions, or common law. Accordingly, to expedite the flow of
27 information, to facilitate the prompt resolution of disputes over confidentiality of
28 discovery materials, to adequately protect information the parties are entitled to

1 keep confidential, to ensure that the parties are permitted reasonable necessary uses
2 of such material in preparation for and in the conduct of trial, to address their
3 handling at the end of the litigation, and serve the ends of justice, a protective order
4 for such information is justified in this matter. It is the intent of the parties that
5 information will not be designated as confidential for tactical reasons and that
6 nothing be so designated without a good faith belief that it has been maintained in
7 a confidential, non-public manner, and there is good cause why it should not be
8 part of the public record of this case.

9 2. DEFINITIONS

10 2.1 Action: Marquez v. Lowe's Home Centers, LLC, et al., USDC
11 [Central Dist. of California] Case No. 2:23-cv-07846 FLA(SKx).

12 2.2 Challenging Party: a Party or Non-Party that challenges the
13 designation of information or items under this Order.

14 2.3 "CONFIDENTIAL" Information or Items: information (regardless of
15 how it is generated, stored, or maintained) or tangible things that qualify for
16 protection under Federal Rule of Civil Procedure 26(c), and as specified above in
17 the Good Cause Statement.

18 2.4 Counsel: Outside Counsel of Record and House Counsel (as well as
19 their support staff).

20 2.5 Designating Party: a Party or Non-Party that designates information
21 or items that it produces in disclosures or in responses to discovery as
22 "CONFIDENTIAL."

23 2.6 Disclosure or Discovery Material: all items or information, regardless
24 of the medium or manner in which it is generated, stored, or maintained (including,
25 among other things, testimony, transcripts, and tangible things), that are produced
26 or generated in disclosures or responses to discovery in this matter.

27 2.7 Expert: a person with specialized knowledge or experience in a
28 matter pertinent to the litigation who has been retained by a Party or its counsel to

1 serve as an expert witness or as a consultant in this Action.

2 2.8 House Counsel: attorneys who are employees of a party to this
3 Action. House Counsel does not include Outside Counsel of Record or any other
4 outside counsel.

5 2.9 Non-Party: any natural person, partnership, corporation, association,
6 or other legal entity not named as a Party to this action.

7 2.10 Outside Counsel of Record: attorneys who are not employees of a
8 party to this Action but are retained to represent or advise a party to this Action
9 and have appeared in this Action on behalf of that party or are affiliated with a law
10 firm which has appeared on behalf of that party, including support staff.

11 2.11 Party: any party to this Action, including all of its officers, directors,
12 employees, consultants, retained experts, and Outside Counsel of Record (and their
13 support staffs).

14 2.12 Producing Party: a Party or Non-Party that produces Disclosure or
15 Discovery Material in this Action.

16 2.13 Professional Vendors: persons or entities that provide litigation
17 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
18 demonstrations, and organizing, storing, or retrieving data in any form or medium)
19 and their employees and subcontractors.

20 2.14 Protected Material: any Disclosure or Discovery Material that is
21 designated as "CONFIDENTIAL."

22 2.15 Receiving Party: a Party that receives Disclosure or Discovery
23 Material from a Producing Party.

24 3. SCOPE

25 The protections conferred by this Stipulation and Order cover not only
26 Protected Material (as defined above), but also (1) any information copied or
27 extracted from Protected Material; (2) all copies, excerpts, summaries, or
28 compilations of Protected Material; and (3) any testimony, conversations, or

1 presentations by Parties or their Counsel that might reveal Protected Material.

2 Any use of Protected Material at trial shall be governed by the orders of the
3 trial judge. This Order does not govern the use of Protected Material at trial.

4 4. DURATION

5 Even after final disposition of this litigation, the confidentiality obligations
6 imposed by this Order shall remain in effect until a Designating Party agrees
7 otherwise in writing or a court order otherwise directs. Final disposition shall be
8 deemed to be the later of (1) dismissal of all claims and defenses in this Action,
9 with or without prejudice; and (2) final judgment herein after the completion and
10 exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action,
11 including the time limits for filing any motions or applications for extension of
12 time pursuant to applicable law.

13 5. DESIGNATING PROTECTED MATERIAL

14 5.1 Exercise of Restraint and Care in Designating Material for Protection.

15 Each Party or Non-Party that designates information or items for protection under
16 this Order must take care to limit any such designation to specific material that
17 qualifies under the appropriate standards. The Designating Party must designate
18 for protection only those parts of material, documents, items, or oral or written
19 communications that qualify so that other portions of the material, documents,
20 items, or communications for which protection is not warranted are not swept
21 unjustifiably within the ambit of this Order.

22 Mass, indiscriminate, or routinized designations are prohibited.
23 Designations that are shown to be clearly unjustified or that have been made for an
24 improper purpose (e.g., to unnecessarily encumber the case development process
25 or to impose unnecessary expenses and burdens on other parties) may expose the
26 Designating Party to sanctions.

27 If it comes to a Designating Party's attention that information or items that it
28 designated for protection do not qualify for protection, that Designating Party must

1 promptly notify all other Parties that it is withdrawing the inapplicable designation.

2 5.2 Manner and Timing of Designations. Except as otherwise provided in
3 this Order (see, e.g., second paragraph of Section 5.2(a) below), or as otherwise
4 stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
5 under this Order must be clearly so designated before the material is disclosed or
6 produced.

7 Designation in conformity with this Order requires:

8 (a) for information in documentary form (e.g., paper or electronic
9 documents, but excluding transcripts of depositions or other pretrial or trial
10 proceedings), that the Producing Party affix at a minimum, the legend
11 “CONFIDENTIAL” (hereinafter “CONFIDENTIAL legend”), to each page that
12 contains protected material. If only a portion or portions of the material on a page
13 qualifies for protection, the Producing Party also must clearly identify the
14 protected portion(s) (e.g., by making appropriate markings in the margins).

15 A Party or Non-Party that makes original documents available for
16 inspection need not designate them for protection until after the inspecting Party
17 has indicated which documents it would like copied and produced. During the
18 inspection and before the designation, all of the material made available for
19 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
20 identified the documents it wants copied and produced, the Producing Party must
21 determine which documents, or portions thereof, qualify for protection under this
22 Order. Then, before producing the specified documents, the Producing Party must
23 affix the “CONFIDENTIAL legend” to each page that contains Protected Material.
24 If only a portion or portions of the material on a page qualifies for protection, the
25 Producing Party also must clearly identify the protected portion(s) (e.g., by making
26 appropriate markings in the margins).

27 (b) for testimony given in depositions that the Designating Party
28 identify the Disclosure or Discovery Material on the record, before the close of the

1 deposition all protected testimony.

2 (c) for information produced in some form other than documentary and
3 for any other tangible items, that the Producing Party affix in a prominent place on
4 the exterior of the container or containers in which the information is stored the
5 legend "CONFIDENTIAL." If only a portion or portions of the information
6 warrants protection, the Producing Party, to the extent practicable, shall identify
7 the protected portion(s).

8 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
9 failure to designate qualified information or items does not, standing alone, waive
10 the Designating Party's right to secure protection under this Order for such
11 material. Upon timely correction of a designation, the Receiving Party must make
12 reasonable efforts to assure that the material is treated in accordance with the
13 provisions of this Order.

14 6 CHALLENGING CONFIDENTIALITY DESIGNATIONS

15 6.1 Timing of Challenges. Any Party or Non-Party may challenge a
16 designation of confidentiality at any time that is consistent with the Court's
17 Scheduling Order.

18 6.2 Meet and Confer. The Challenging Party Shall initiate the dispute
19 resolution process under Civil Local Rule 37-1 et seq.

20 6.3 The burden of persuasion in any such challenge proceeding shall be on
21 the Designating Party. Frivolous challenges, and those made for an improper
22 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
23 parties), may expose the Challenging Party to sanctions. Unless the Designating
24 Party has waived or withdrawn the confidentiality designation, all parties shall
25 continue to afford the material in question the level of protection to which it
26 is entitled under the Producing Party's designation until the Court rules on the
27 challenge.
28

7 ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the Action has been terminated, a Receiving Party must comply with the provisions of Section 13 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated “CONFIDENTIAL” only to:

(a) the Receiving Party’s Outside Counsel of Record in this Action, as well as employees of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

(b) the officers, directors, and employees (including House Counsel) of the Receiving Party to whom disclosure is reasonably necessary for this Action;

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(d) the Court and its personnel;

(e) court reporters and their staff;

(f) professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this Action and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) during their depositions, witnesses, and attorneys for witnesses, in the Action to whom disclosure is reasonably necessary provided: (1) the deposing party requests that the witness sign the form attached as Exhibit A hereto; and (2) they will not be permitted to keep any confidential information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order; and

(i) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the parties engaged in settlement discussions.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED
IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as “CONFIDENTIAL,” that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in

1 this action as “CONFIDENTIAL” before a determination by the court from which
 2 the subpoena or order issued, unless the Party has obtained the Designating Party’s
 3 permission. The Designating Party shall bear the burden and expense of seeking
 4 protection in that court of its confidential material, and nothing in these provisions
 5 should be construed as authorizing or encouraging a Receiving Party in this Action
 6 to disobey a lawful directive from another court.

7 9. A NON-PARTY’S PROTECTED MATERIAL SOUGHT TO BE
 8 PRODUCED IN THIS LITIGATION

9 (a) The terms of this Order are applicable to information produced by a
 10 Non-Party in this Action and designated as “CONFIDENTIAL.” Such information
 11 produced by Non-Parties in connection with this litigation is protected by the
 12 remedies and relief provided by this Order. Nothing in these provisions should be
 13 construed as prohibiting a Non-Party from seeking additional protections.

14 (b) In the event that a Party is required, by a valid discovery request, to
 15 produce a Non-Party’s confidential information in its possession, and the Party is
 16 subject to an agreement with the Non-Party not to produce the Non-Party’s
 17 confidential information, then the Party shall:

18 (1) promptly notify in writing the Requesting Party and the Non-Party
 19 that some or all of the information requested is subject to a confidentiality
 20 agreement with a Non-Party;

21 (2) promptly provide the Non-Party with a copy of the Stipulated
 22 Protective Order in this Action, the relevant discovery request(s), and a reasonably
 23 specific description of the information requested; and

24 (3) make the information requested available for inspection by the
 25 Non-Party, if requested.

26 (c) If the Non-Party fails to seek a protective order from this Court
 27 within 14 days of receiving the notice and accompanying information, the
 28 Receiving Party may produce the Non-Party’s confidential information responsive

1 to the discovery request. If the Non-Party timely seeks a protective order, the
2 Receiving Party shall not produce any information in its possession or control that
3 is subject to the confidentiality agreement with the Non-Party before a
4 determination by the Court. Absent a court order to the contrary, the Non-Party
5 shall bear the burden and expense of seeking protection in this Court of its
6 Protected Material.

7 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

8 If a Receiving Party learns that, by inadvertence or otherwise, it has
9 disclosed Protected Material to any person or in any circumstance not authorized
10 under this Stipulated Protective Order, the Receiving Party must immediately (a)
11 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
12 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
13 the person or persons to whom unauthorized disclosures were made of all the terms
14 of this Order, and (d) request such person or persons to execute the
15 “Acknowledgment and Agreement to Be Bound” that is attached hereto as Exhibit
16 A.

17 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE**
18 **PROTECTED MATERIAL**

19 When a Producing Party gives notice to Receiving Parties that certain
20 inadvertently produced material is subject to a claim of privilege or other
21 protection, the obligations of the Receiving Parties are those set forth in Federal
22 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
23 whatever procedure may be established in an e-discovery order that provides for
24 production without prior privilege review. Pursuant to Federal Rule of Evidence
25 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
26 of a communication or information covered by the attorney-client privilege or
27 work product protection, the parties may incorporate their agreement in the
28 stipulated protective order submitted to the Court.

12. MISCELLANEOUS

12.1 Right to Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. A Party that seeks to file under seal any Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. If a Party's request to file Protected Material under seal is denied by the court, then the Receiving Party may file the information in the public record unless otherwise instructed by the court.

13. FINAL DISPOSITION

After the final disposition of this Action, as defined in Section 4 (DURATION), within 60 days of a written request by the Designating Party, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed; and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries, or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain

1 an archival copy of all pleadings, motion papers, trial, deposition, and hearing
2 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert
3 reports, attorney work product, and consultant and expert work product, even if
4 such materials contain Protected Material. Any such archival copies that contain
5 or constitute Protected Material remain subject to this Protective Order as set forth
6 in Section 4 (DURATION).

7 14. Any violation of this Order may be punished by any and all appropriate
8 measures including, without limitation, contempt proceedings and/or monetary
9 sanctions.

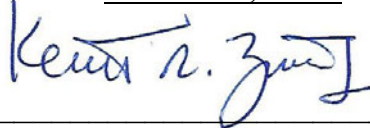
10 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

11
12 DATED March 12, 2024

13
14 */s/ Haleh Shekarchian*

15 Attorneys for Plaintiff PAULINE MARQUEZ

16
17 DATED: March 12, 2024

18 

19 Attorneys for Defendant LOWE'S HOME CENTERS, LLC

20
21
22 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

23
24 DATED: March 13, 2024

25 

26
27 Honorable Steve Kim
28 United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of perjury
 that I have read in its entirety and understand the Stipulated Protective Order that
 was issued by the United States District Court for the Central District of California
 on March 13, 2024 in the case of *Pauline Marquez v. Lowe's Home Centers, LLC*,
 USDC No. 2:23-cv-07846 FLA(SKx). I agree to comply with and to be bound by
 all the terms of this Stipulated Protective Order, and I understand and acknowledge
 that failure to so comply could expose me to sanctions and punishment in the
 nature of contempt. I solemnly promise that I will not disclose in any manner any
 information or item that is subject to this Stipulated Protective Order to any person
 or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court
 for the Central District of California for the purpose of enforcing the terms of this
 Stipulated Protective Order, even if such enforcement proceedings occur after
 termination of this action. I hereby appoint _____ [print
 or type full name] of _____ [print or
 type full address and telephone number] as my California agent for service of
 process in connection with this action or any proceedings related to enforcement of
 this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____